

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** MARCH 2, 2016  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13607](#)-A-13 BEATRICE NARVAEZ CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 11-30-15 [[31](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

At the request of the moving party, the matter is dropped from calendar.

2. [15-13607](#)-A-13 BEATRICE NARVAEZ CONTINUED MOTION TO VALUE  
RSW-1 COLLATERAL OF WESTLAKE  
BEATRICE NARVAEZ/MV FINANCIAL SERVICES, INC.  
11-10-15 [[20](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

Resolved by stipulation and order, the matter is dropped as moot.

3. [15-14710](#)-A-13 MOISES PALMA MOTION TO DISMISS CASE  
MHM-1 1-13-16 [[23](#)]  
MICHAEL MEYER/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING, MOTION  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [15-14411](#)-A-13 NICK/CHRISTINA NGIRAILILD ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-20-16 [[27](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
INSTALLMENT FEE PAID \$77.00

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

5. [16-10013](#)-A-13 GARY/MELISSA HAFELI  
PK-2  
LEIF HOMME/MV  
ROBERT WILLIAMS/Atty. for dbt.  
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-17-16 [[20](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Denied as moot

**Order:** Civil minute order

### **MOOTNESS OF REQUEST FOR STAY RELIEF**

Federal courts have no authority to decide moot questions. *Arizonaans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 2.10 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Leif and Karen Homme's motion for relief from the automatic stay has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

6. [15-14334](#)-A-13 FLORIANO/IMELDA RAMA CONTINUED HEARING RE: PLAN  
11-5-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

A plan confirmed, the matter is dropped as moot.

7. [15-14635](#)-A-13 CARLOS/SARA LAM CONTINUED HEARING RE: PLAN  
11-29-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.

*[The hearing on this matter will be concurrent with the hearing on the trustee's objection to confirmation in this case having docket control no. MHM-2.]*

**No tentative ruling.**

8. [15-14635](#)-A-13 CARLOS/SARA LAM MOTION TO DISMISS CASE  
MHM-1 1-8-16 [[16](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

**Notice:** LBR 9014-1(f)(1); written opposition filed

**Disposition:** Continued to April 6, 2016, at 9:00 a.m.

**Order:** Not applicable

The trustee moves to dismiss for unreasonable delay by the debtors that is prejudicial to creditors on two grounds: (1) failure to appear at the scheduled § 341 meeting and (2) failure to provide the trustee with required documentation.

The debtors' response to the motion states that they have provided all requested and required documents to the trustee. Further, it admits the failure to appear at the meeting of creditors by the debtor but explains that the debtor will appear at the March 2, 2016 meeting of creditors.

If the trustee disputes the debtors' contention that all documents have been filed, the court will attempt to resolve this disputed factual issue.

But if the trustee does not dispute this contention, and all documents have now been provided, then the court will continue this motion to dismiss to April 6, 2016, at 9:00 a.m. If the debtors do not attend a continued meeting of creditors between this hearing date and April 6, 2016, the court may likely dismiss the case under § 1307(c)(1).

9. [15-14635](#)-A-13 CARLOS/SARA LAM  
MHM-2

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-9-16 [[24](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

10. [15-14635](#)-A-13 CARLOS/SARA LAM  
RSW-1  
CARLOS LAM/MV

MOTION TO VALUE COLLATERAL OF  
SELECT PORTFOLIO SERVICING,  
INC.  
2-12-16 [[29](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f) (2); no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b) (2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b) (2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 14007 Raphael Ave., Bakersfield, CA.

The court values the collateral at \$375,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's

value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 14007 Raphael Ave., Bakersfield, CA, has a value of \$375,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

11. [15-14635](#)-A-13 CARLOS/SARA LAM  
RSW-2  
CARLOS LAM/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
AFROUZ NIKMANESH  
2-12-16 [[33](#)]

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the

value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 14007 Raphael Ave., Bakersfield, CA.

The court values the collateral at \$375,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 14007 Raphael Ave., Bakersfield, CA, has a value of \$375,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

12. [15-14636](#)-A-13 JONNA BOWSER  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
1-11-16 [[16](#)]

#### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$800.

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

13. [15-12639](#)-A-13 DAVID/MONICA GARZA  
PWG-3  
DAVID GARZA/MV  
PHILLIP GILLET/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
1-19-16 [[79](#)]

## **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

## **CONFIRMATION**

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition



are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

## **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

14. [15-14447](#)-A-13 ASHLEY RANDOLPH CONTINUED HEARING RE: PLAN  
11-17-15 [[5](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

15. [15-14447](#)-A-13 ASHLEY RANDOLPH MOTION TO DISMISS CASE  
MHM-1 1-12-16 [[25](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

## **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [15-14447](#)-A-13 ASHLEY RANDOLPH OBJECTION TO CONFIRMATION OF  
MHM-2 PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-9-16 [[40](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

17. [16-10147](#)-A-13 ISABEL TORRES  
RDN-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
RANDALL NAIMAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-3-16 [[11](#)]

**Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1319 East 18th Street, Bakersfield, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

U.S. Bank National Association, as Trustee, has filed a motion for relief from the automatic stay as to certain real property. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1319 East 18th Street, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

18. [11-13553](#)-A-13 JOSE VILLALVASO AND MOTION TO MODIFY PLAN AND/OR  
AOE-2 TERESA SOTO DE VILLALVASO MOTION TO MODIFY CHAPTER 13  
JOSE VILLALVASO/MV PLAN  
1-21-16 [[163](#)]  
ANTHONY EGBASE/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

19. [11-13553](#)-A-13 JOSE VILLALVASO AND CONTINUED MOTION TO DISMISS  
MHM-5 TERESA SOTO DE VILLALVASO CASE  
MICHAEL MEYER/MV 11-17-15 [[143](#)]  
ANTHONY EGBASE/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

This motion was continued from the court's January 28, 2016, calendar to coincide with the motion to modify the plan. If court's confirmation of the modified plan fully resolves the basis for the trustee's motion to dismiss, the court will drop this matter from calendar as moot. If the trustee's grounds for dismissal are still unresolved, the trustee may notify the court at the hearing of this fact.

20. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ MOTION TO DISMISS CASE  
MHM-2 1-8-16 [[66](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [11-15962](#)-A-13 ARNOLDUS/MARINDA DU TOIT MOTION FOR COMPENSATION FOR  
PK-4 PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
2-4-16 [[62](#)]

PATRICK KAVANAGH/Atty. for dbt.

### **Tentative Ruling**

**Application:** Allowance of Final Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Patrick Kavanagh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5277.50 and reimbursement of expenses in the amount of \$52.74.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Patrick Kavanagh's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having

entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5277.50 and reimbursement of expenses in the amount of \$52.74. The aggregate allowed amount equals \$5330.24. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$5330.24 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

22. [15-11373](#)-A-13 FREDRICK HALL  
PK-2  
FREDRICK HALL/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
1-5-16 [[39](#)]

### **Tentative ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

### **OBJECTIONS**

#### Additional Provision § 2.07

The trustee objects to the additional provision of the plan section 2.07 because funds on hand are not sufficient to execution that provision. Funds on hand are \$319.75 but section 2.07 requires payment of \$629.50 in month 9 of the plan (January 2016 is month 9 of the plan).

The debtor concedes this basis for the trustee's first objection. He offers to modify this provision in the order confirming the plan to allow for payment of the exact amount of funds on hand in month 9, \$319.75, to his attorney. The court finds this resolution acceptable absent a further objection to the trustee to such a change in the order confirming the plan.

#### Fees in Excess of Maximum Fee under LBR 2016-1(c)

The plan states in section 2.06, "Subject to prior court approval, additional fees of \$5300.00 shall be paid through this plan. Debtors' attorney will seek the court's approval by ☒ complying with LBR 2016-1(c) or ☐ filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017."

The trustee objects to this provision as conflicting with LBR 2016-1(c) and the original confirmed plan. The trustee seeks to hold the debtor's attorney to the maximum fee permitted under LBR 2016-1(c), which is \$4000 in non-business cases. The debtor's attorney admits having opted in to the flat fee under LBR 2016-1(c). And the original confirmed plan (as well as the modified plan) opt in to the flat fee under LBR 2016-1(c).

The court agrees that the amount provided in the modified plan, (\$200 prior to the filing and \$5300 through the plan) exceeds the maximum limit for the flat fee allowed for nonbusiness cases. LBR 2016-1(c) (1).

But LBR 2016-1(c) (3) permits an attorney to apply for additional fees when the fixed fee "is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case." The court may award such additional fees, after a noticed hearing on an application, if "substantial and unanticipated post-confirmation work is necessary." LBR 2016-1(c) (3).

The plan provides that \$5300 additional fees are "[s]ubject to prior court approval." It also provides that this approval will be obtained by complying with LBR 2016-1(c), a provision that contemplates fees higher than the fixed fee so long as specific standards are satisfied and a noticed application is filed. Accordingly, section 2.06 is not inconsistent with LBR 2016-1(c). Confirmation of this plan does not violate 2016-1(c) because fees are not awarded in the amount of \$5300. Instead, fees are awarded as part of the confirmation process in the amount of the fixed fee--\$4000. Any fees over such amount are in no way guaranteed and must be sought by a fee application showing that substantial and *unanticipated* postconfirmation work was necessary.

#### **MODIFICATION APPROVED**

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

23. [15-13174](#)-A-13 MARSHA WALKER  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
1-13-16 [[22](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

24. [13-11784](#)-A-13 HAYES/MEREDITH MCKNIGHT MOTION TO MODIFY PLAN  
RSW-2 1-22-16 [[56](#)]  
HAYES MCKNIGHT/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

25. [15-13491](#)-A-13 FRED/PAMELA PITTS MOTION TO DISMISS CASE  
MHM-1 1-27-16 [[26](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [11-63197](#)-A-13 RODNEY/SHIRLEY BRUCE MOTION TO DISMISS CASE  
MHM-2 1-8-16 [[107](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.